



BY EMAIL AND ELECTRONIC SUBMISSION

Clerk's Office
California Air Resources Board
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January 6, 2022

XTRA Lease provides these comments on the California Air Resources Boards' *Proposed 15-Day Changes to the Proposed Amendments to the Airborne Toxic Control Measure for In-Use Diesel Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate* (the "Proposed TRU Regulations"). XTRA Lease is a leading provider of over-the-road trailers for rent and lease in the United States, offering a fleet of about 85,000 trailers for rent and lease, including dry vans, flatbeds, reefers, local cartage vans, storage trailers and specialty equipment through more than 47 locations, including six locations in California.

XTRA Lease appreciates the outreach that the California Air Resources Board ("CARB") staff has undertaken throughout this rulemaking. While we generally agree with CARB's approach in the Proposed TRU Regulations with respect to TRU lessors and lessees, and while we appreciate the steps CARB has taken to address XTRA Lease's comments on the prior draft of the Proposed TRU Regulations, we propose several additional clarifying changes as outlined more specifically on the following pages. Our suggested revisions to the text of the Proposed TRU Regulations can also be found on Attachment 1 to this document.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew Krueger".

Andrew Krueger
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Specific Comments

Comment Number 1: XTRA Lease appreciates CARB's modifications to Section 2477.12(a)(1)(A) to allow TRU lessors to delegate all owner responsibilities under Section 2477.5 to TRU lessees. XTRA Lease requests that the language in Section 2477.12(a)(1)(A) be further modified to clarify that TRU lessors may, as appropriate, partially delegate some of the responsibilities under Section 2477.5 to TRU lessees while retaining certain responsibilities that can be more efficiently handled by TRU lessors. For example, it may be more efficient for TRU lessors to retain responsibility for the TRU operating fee and compliance labeling requirements in Sections 2477.5(h) and (i) in the context of short-term TRU rentals. Because XTRA Lease enters into both long-term leases and short-term rentals with its lessees, XTRA Lease requests the flexibility to delegate and/or retain the individual requirements under Section 2477.5 on a case-by-case basis.

For the same reasons, XTRA Lease requests that Section 2477.12(b) be deleted and a new Section 2477.12(a)(1)(B) be added to make clear that TRU lessees will only be responsible for any specific TRU requirements to the extent such requirements have been specifically delegated to the lessee.

XTRA Lease also requests that the definition of "owner" in Section 2477.4 be revised to align with Section 2477.12. Specifically, the broad delegation provision in Section 2477.12 appears to obviate the need for a one-year lease term threshold in the definition of "owner," and XTRA Lease requests confirmation from CARB that the intent of Section 2477.12 is to allow TRU lessors to delegate compliance responsibilities with respect to TRUs leased or rented for less than one year.

XTRA Lease further requests confirmation from CARB that the Proposed TRU Regulations are not intended to preclude separate contractual arrangements between TRU lessors and lessees with respect to the allocation of compliance responsibilities and costs.

Comment Number 2: XTRA Lease notes that the broad language in Section 2477.12(a)(1)(A)(2) requiring TRU lessors to submit third party agreement confirmation information to CARB in order to delegate compliance responsibilities would require XTRA Lease to submit thousands of lease and rental agreements to CARB each year. Many of such agreements would relate to short-term rentals and/or rentals taking place entirely outside of California. To reduce the administrative burden on both TRU lessors and CARB that would be created by this broad reporting requirement, XTRA lease proposes that, as an alternative to the automatic collection of information currently set forth in Sections 2477.12(a)(1)(A)(2) and 2477.20(k), TRU lessors be obligated to promptly provide identifying information for their lessees when CARB requests such information for enforcement purposes. TRU lessors could designate a specific point of contact to promptly respond to information requests and provide the information currently required to be submitted in Section 2477.20(k) of the draft regulation when requested.

A similar approach has proven successful at the federal level. Section 396 of the Federal Motor Carrier Safety Administration regulations require commercial motor vehicles, including over-

the-road semi-trailers, to be inspected once every 12 months. This annual inspection must be documented and attested to by a qualified inspector in a proscribed manner that must be available to a regulator upon request. Equipment lessors often perform these inspections as a service to their customers, and Section 49 CFR Section 396.21(b)(3) permits an equipment operator to obtain a copy of this essential documentation from their lessor upon request from a federal, state or local authority. XTRA Lease routinely assists its customers by producing such required documentation when requested by regulators.

XTRA Lease also routinely interacts and cooperates with investigators as part of law enforcement and regulatory investigations seeking information as to the identity and contact information for motor carriers renting or leasing XTRA Lease equipment. When an inquiring official has identifying information for a unit of XTRA Lease equipment (typically an XTRA Lease identification number, license plate number or VIN number), XTRA Lease will provide a copy of XTRA Lease's rental agreement, which among other things, includes the name, address, and telephone number for the rented or leased unit.

These examples are offered to illustrate that leasing companies like XTRA Lease have the experience of quickly responding to customer and regulatory requests for essential information to satisfy regulator needs, and by doing so, reducing the need for operators and regulators to collect and store large volumes of documents and information they may never need to access.

If CARB is not willing to make the modification requested above and set forth in Attachment 1 to this document, XTRA Lease proposes that the reporting requirement in Section 2477.12(a)(1)(A)(2) be limited to leases entered into within California with a minimum term length of at least six months. This modification would help target the reporting requirement to only those leases that will be most relevant to CARB's enforcement efforts with respect to the Proposed TRU Regulations.

Comment Number 3: XTRA Lease notes that the one-minute data recording intervals required under clause (1) of the definition of "Electronic Tracking System" in Section 2477.4 may not be feasible with current technology (including battery limitations), and CARB should consider modifying the recording intervals to ensure that regulated parties are able to comply from a technical standpoint. For example, if a TRU is not powered on, once-per-minute recording will drain the batteries to both the tracking device and the TRU. In instances where a TRU-equipped trailer is being utilized for dry freight and the TRU is not powered on, we suggest requiring recording intervals of once per day while the trailer is idle or once every 30 minutes while the trailer is in motion to help protect the life of the electronic tracking device and TRU batteries.

Attachment 1

Suggested Revisions to Proposed TRU Regulations

§ 2477.4. Definitions.

(a) For purposes of this TRU Regulation, the following definitions apply:

...

“Electronic Tracking System” means a system that meets the following criteria:

- (1) The tracking device shall acquire, at a minimum, date, time TRU engine hour meter reading, and location data at a rate of at least (A) when the TRU engine is running, one reading per minute, with no more than 10 minutes data gap, (B) when the TRU engine is not running and the TRU-equipped trailer is in motion, one reading per 30 minutes, and (C) when the TRU engine is not running and the TRU-equipped trailer is not in motion, one reading per day.
- (2) The tracking device shall be capable of determine if the TRU or TRU gen set location is within California and determining the TRU engine run time in California for each day.
- (3) The tracking records shall be collected by an independent entity with no business relationship to the owner or operator of the TRU or TRU gen set being tracked, other than to provide the tracking service. The data shall be stored on a server that is secure from tampering and inaccessible to the TRU or TRU gen set owner or operator, other than to download reports over the Internet. An inspector shall have free access to download reports from this website over the Internet that show the TRU or TRU gen set engine operation in California for each day.

...

“Owner” means, except as modified by paragraphs (1), (2) or (3) below, the person legally holding title (or its equivalent) to the TRU or TRU gen set, or either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles or its equivalent in another state, province, or country, as evidenced on the vehicle registration document carried in the vehicle to which the TRU is attached. An owner may also be a driver or operator.

- (1) Banks, other financial lending institutions, or other entities engaged in the act of financing TRUs are not owners, for the purposes of this subarticle unless they otherwise have an obligation to comply with this regulation (e.g., contractually responsible for the maintenance of a TRU under a sales or lease agreement).

(2) For a TRU-equipped truck or trailer, or TRU gen set owned by the federal government and not registered in any state or local jurisdiction, the owner means the department, agency, branch, or other entity of the United States, including the United States Postal Service, to which the vehicles in the fleet are assigned or which have responsibility for maintenance of the vehicles.

(3) For a TRU-equipped truck or trailer, or TRU gen set that is rented or leased:

(A) The owner shall be ~~presumed to be~~ the lessee rental or leasing entity for purposes of compliance with those subsections of section 2477.5 that have been delegated to the lessee under section 2477.12(a)(1)(A).; ~~if:~~

~~1. The rental or lease agreement is for a period of less than one year; or~~

~~2. The rental or lease agreement is for a period of one year or longer, unless the terms of the rental or lease agreement or other equally reliable evidence identifies the party responsible for compliance with State laws that apply to TRUs to be the renting operator or lessee.~~

§ 2477.12. Requirements for Lessors and Lessees.

(a) Lessors shall be subject to all of the following:

(1) The lessor is responsible for the owner requirements set forth in section 2477.5. See the definition of “owner” in section 2477.4 for clarification related to banks and financial institutions.

(A) The lessor may delegate some or all of the responsibilities under section 2477.5 to the lessee, if the following conditions are met:

1. The lease contract shall show clear delegation of the TRU requirements to the lessee;
2. The lessor shall promptly make available to CARB ~~submit~~ third party agreement confirmation information as required under section 2477.20(k) for the leased unit ~~units to CARB following any request for such information from CARB at least 10 days prior to the lessee reporting the TRU or TRU gen set to CARB.~~
3. The lessor shall notify the lessee in writing of this delegation.

(B) To the extent any specific requirement under section 2477.5 has been delegated to the lessee in accordance with section 2477.12(a)(1)(A), the lessee shall be responsible for complying with such delegated requirement in accordance with the applicable subsection of section 2477.5.

~~(b) Lessees shall be subject to all of the following:~~

~~(1) If delegated by contract and the lessor has submitted third party agreement confirmation information for leased units to CARB under section 2477.12(a)(1)(A) and notified the lessee of delegation under section 2477.12(a)(1)(A)3., the lessee is responsible for the TRU reporting, operating fee, and compliance label requirements of sections 2477.5(g), (h), and (i) and shall complete all of the following:~~

~~(A) Report the TRU or TRU gen set to CARB and pay applicable TRU operating fees after at least 10 days of the lessor submitting the third party agreement confirmation information for leased units to CARB, but no more than 30 days after the lessor's notice;~~

~~(B) Submit a copy of the TRU Certification to the lessor within 30 days after reporting the TRU or TRU gen set to CARB and a TRU Certification is issued; and~~

~~(C) Affix (attach) the IDN to the TRU or TRU gen set housing within 30 days in accordance with subparagraph 2477.5(g)(6).~~

§ 2477.20. Reporting.

(k) Third-party Agreement Confirmation Information. For each leased unit, the lessor shall promptly make available to CARB ~~submit~~ all of the following information ~~to CARB following any request for such information from CARB:~~

(1) Unit serial number for each TRU or TRU gen set;

(2) Unique company equipment number;

(3) Vehicle license number;

(4) Vehicle Identification Number (VIN);

(5) Lessor company name, address, federal tax ID (EIN), contact person, and contact information;

(6) Lessee company name, address, federal tax I.D (EIN), contact person, and contract information;

- (7) Copy of the contract pages of the lease contract with the language highlighted that identifies the lessee as the responsible party for compliance with this TRU Regulation.